



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5173-N-09-C]

**Affirmatively Furthering Fair Housing Assessment Tool for Public Housing Agencies:
Announcement of Final Approved Document**

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice announces that the Assessment Tool developed by HUD for use by Public Housing Agencies receiving assistance under the United States Housing Act of 1937 has completed the notice and comment process required by the Paperwork Reduction Act (PRA), been reviewed by the Office of Management and Budget and approved. While this Assessment Tool has been approved, this Notice does not trigger the obligation of PHAs to conduct and submit an AFH in accordance with 24 CFR 5.160, as HUD has not yet provided PHAs with the data they will need. As HUD makes data available for certain PHAs, HUD will publish, in the Federal Register, a Notice announcing the availability of data for certain PHAs, triggering their obligation to conduct and submit an AFH, and will post such Notice on the HUD Exchange. HUD also anticipates that, at that time, the online User Interface will be available for use by PHAs. Until such time that PHAs are required to conduct and submit an AFH, HUD notes that PHAs must continue to comply with existing fair housing and civil rights requirements. This Assessment Tool, referred to as the PHA Assessment Tool, was modeled on the Local Government Assessment Tool, first approved by OMB on December 31, 2015 but with modifications to address the different public housing and Housing Choice Voucher operations that PHAs have compared to local governments, and how fair housing planning may be undertaken by PHAs in a meaningful manner. As with the Local Government Assessment Tool,

the PHA Assessment Tool allows for collaboration with other PHAs. To reduce burden for PHAs, HUD has increased the threshold for the insert from QPHAs that have 550 units or less to PHAs with 1,250 or fewer combined public housing and HCV units. HUD has also committed to developing an additional Assessment Tool specifically for use by Qualified PHAs (QPHAs) who conduct and submit an individual AFH or collaborate with other QPHAs to conduct and submit a joint AFH to be issued in 2017. Therefore, this PHA Assessment Tool will be for use by PHAs submitting AFHs individually or jointly, and for collaborations among PHAs with 1,250 or fewer units and with PHAs with more than 1,250 units. In addition, to reduce burden further, this Assessment Tool includes an insert with streamlined questions for PHAs with 1,250 or fewer units to use if jointly submitting with PHA with more than 1,250 units. In addition, this Assessment Tool includes revised instructions based on public comments received during the 30-day PRA review that provide more guidance to PHAs in conducting the AFH, including how the regional analysis is to be prepared based on the location of a PHA's geographic region and program type. Through the notice and comment process required by the PRA, HUD made changes to the PHA Assessment Tool from the 30-day notice published in the Federal Register on August 23, 2016.

FOR FURTHER INFORMATION CONTACT: Krista Mills, Deputy Assistant Secretary, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 7th Street, SW, Room 5246, Washington, D.C. 20410; telephone number 866-234-2689 (toll-free) or 202-402-1432 (local). Individuals who are deaf or hard of hearing and individuals with speech impediments may access this number via TTY by calling the toll-free Federal Relay Service during working hours at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 2015, at 80 FR 42357, HUD published in the Federal Register its Affirmatively Furthering Fair Housing (AFFH) final rule. The AFFH final rule provides HUD program participants with a new approach for planning and implementing locally-developed housing goals, actions and strategies involving increasing choice, mobility, preservation, community revitalization and other collaborative or outreach efforts that are designed to reduce disparities in access to opportunity and improve fair housing outcomes that will assist them in meeting their statutory obligation to affirmatively further fair housing as required by the Fair Housing Act. To assist HUD program participants in improving planning to achieve meaningful fair housing outcomes, the new approach involves an “assessment tool” for use in completing the regulatory requirement to conduct an assessment of fair housing (AFH) as set out in the AFFH rule. Because of the variations in the different HUD program participants subject to the AFFH rule, HUD has developed three separate assessment tools: one for public housing agencies (PHAs) receiving assistance under section 8 or 9 of the United States Housing Act of 1937 (42 U.S.C. 1437f or 1437g), which is the subject of this notice, the PHA Assessment Tool; one for local governments, the Local Government Assessment Tool; and one for State and Insular Areas, the State and Insular Areas Assessment Tool. PHAs submitting alone or with other PHAs will use the PHA Tool, PHAs submitting with local governments will use the Local Government Tool, and PHAs submitting with State or Insular Areas will use the State Tool. All three assessment tools, because they are information collection documents, are required to undergo the PRA notice and comment process. HUD has also committed to developing a fourth Assessment Tool specifically for use by QPHAs who choose to conduct and submit an individual AFH or that collaborate with other QPHAs to conduct and submit a joint AFH.

II. PHA Assessment Tool

A. The PRA Process

On March 23, 2016, at 81 FR 15549, HUD published its 60-day notice, the first notice for public comment required by the PRA, to commence the process for approval of the PHA Assessment Tool. The 60-day public comment period ended on May 23, 2016, and HUD received 39 public comments.

On September 20, 2016, at 81 FR 64475, HUD published its 30-day notice under the PRA. In the 30-day notice, HUD addressed the significant issues raised by the commenters on the 60-day notice. HUD received 142 public comments in response to the 30-day notice. HUD appreciates the comments received in response to the 30-day notice, and, in developing this final version of the Assessment Tool, all comments were carefully considered. The significant issues commenters raised and HUD's responses to these issues are addressed in Section II.C. of this notice. All comments submitted on the September 20, 2016, notice can be found on www.regulations.gov at <https://www.regulations.gov/document?D=HUD-2016-0103-0001>. In addition, HUD has posted on its website at http://www.huduser.gov/portal/affht_pt.html and <https://www.hudexchange.info/programs/affh/>, a comparison of the PHA Assessment Tool that was published for 30-day public comment on September 20, 2016 and this final PHA Assessment Tool as announced by this notice.

B. Changes Made to the PHA Assessment Tool

The following highlights changes made to the Assessment Tool for Public Housing Agencies in response to public comment and further consideration of issues by HUD.

Contributing Factors. HUD has tailored the definitions of Contributing Factors, found in

Appendix D of the Assessment Tool, to better apply in the context of a PHA's operations. HUD has made changes to contributing factors that include: Admissions and occupancy policies and procedures, including preferences in publicly supported housing; Impediments to mobility; Lack of access to opportunity due to high housing costs; Lack of local public and/or private fair housing outreach, enforcement, and/or resources; Lack of meaningful language access; Lack of public and/or private investment in specific neighborhoods, including services or amenities; Land use and zoning laws; Location of accessible housing; Source of income discrimination; and State or local laws, policies, or practices that discourage individuals with disabilities from living in apartments, family homes, and other integrated settings. HUD has consolidated and therefore removed certain contributing factors based on public comment, such as: Lack of local public fair housing enforcement; Lack of resources for fair housing agencies and organizations; Lack of state or local fair housing laws; Local Restrictions or Requirements for Landlords Renting to Voucher-holders; and Nuisance laws. HUD has combined and added certain contributing factors based on public comment, such as: Displacement of and/or lack of housing support for victims of domestic violence, dating violence, sexual assault, and stalking; Loss of affordable housing; and Private Discrimination and/or lack of fair housing laws.

Goal Setting. HUD has provided further clarifying instructions about how PHAs should identify contributing factors and that PHAs should create fair housing goals that are within their own capacity. For PHAs in a joint or regional collaboration, the User Interface will provide for PHAs to identify which fair housing goal is to be accomplished by which PHA (or PHAs) in the collaboration.

Insert for PHAs with 1,250 or fewer Units. In the 30-day PRA notice, HUD added an insert for use by QPHAs (eligible PHAs with a combined unit total of 550 or fewer) that

collaborate with non-qualified PHAs. HUD has revised this threshold, and PHAs with a combined unit total of 1,250 or fewer combined public housing units or Housing Choice Vouchers (HCVs, i.e. Section 8) units can use this insert when collaborating with a PHA with a combined unit total above 1,250. The insert is meant to cover the analysis required for the collaborating PHA's service area, and region, where applicable – i.e., not analyzed by another PHA, such as in the case where PHAs have overlapping regional geographies. For PHAs with 1,250 or fewer units, the insert is designed to make the analysis less burdensome while retaining the fair housing analysis required by the AFFH Rule. The instructions to the Assessment Tool have also been revised to explain this and help program participants to understand which Tool to use.

PHA Regional Analysis. In this final version of the Assessment Tool designed for PHAs, HUD has provided instructions related to the regional analysis that various size PHAs and QPHAs (e.g., rural PHAs, PHAs within metropolitan areas, PHAs within micropolitan areas, etc.) must conduct when completing an AFH. There are multiple parts to this explanation: (1) a description of the service area, also known as the jurisdiction, of various size PHAs in terms of their authorized geographic operations; (2) a description of the PHA's region for purposes of analysis under the AFFH rule; (3) a description of the HUD-provided data for the PHA's applicable region; (4) instructions related to use of data and identification of fair housing issues and related contributing factors for different size PHAs; and (5) instructions related to rural PHAs, State PHAs, and PHAs in Insular Areas.

PHA Jurisdiction/Service Area ¹	HUD-Provided Data for PHA Region
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¹ All references to counties include counties or statistically equivalent areas (e.g., parishes).

Metropolitan and Micropolitan (CBSA) PHAs: PHA jurisdiction/service area is located within a CBSA	Maps and Tables for the CBSA
Sub-County Rural (Non-CBSA) PHAs: PHA jurisdiction/service area is outside of a CBSA and smaller than a county	Tables for the county. Maps are available for the county and if patterns of segregation, R/ECAPs, disparities in access to opportunity extend into a broader area, maps are also available to identify such patterns, trends, and issues.
County-Wide or Larger Rural (Non-CBSA) PHAs²: PHA jurisdiction/service area is outside of a CBSA and boundaries are consistent with the county or larger	Tables for all contiguous counties, including PHA county, in the same state. Maps are available for all counties and if patterns of segregation, R/ECAPs, disparities in access to opportunity extend into a broader area, maps are also available to identify such patterns, trends, and issues.
Statewide PHAs: The PHA's jurisdiction/service area is the State.	HUD will generally provide data consistent with that provided to the State. Maps may be used to analyze fair housing issues that extend beyond the state's borders, where applicable, but tables are provided with data within the state's borders.

As the above chart indicates, HUD will provide regional data for PHAs with different service areas based on geographic areas used by the U.S. Census Bureau. As explained further in the full instructions to the Tool, the standard data that HUD will provide may not always be the most relevant from a fair housing perspective. For PHAs and all other program participants under the AFFH rule, the Assessment Tool is framed so that it can be applied to Public Housing-only or HCV-only PHAs and combined PHAs with various types of Publicly Supported Housing (PSH)³

² HUD acknowledges that there are other PHAs, including regional PHAs, that may have differing or unique geographies from the categories in this table. HUD may provide data in the AFFH Data and Mapping Tool for such PHAs appropriate for their geographies based on administrative and data considerations. All program participants are required to conduct an analysis of their jurisdiction and region consistent with the AFFH Final Rule.

³ The term "publicly supported housing" refers to housing assisted, subsidized, or financed with funding through Federal, State, or local agencies or programs as well as housing that is financed or administered by or through any such agencies or programs. HUD is currently providing data on five specific categories of housing: Public Housing; Project-Based Section 8; "Other Multifamily Housing" (including Section 202 – Supportive Housing for the Elderly and Section 811 – Supportive Housing for Persons with Disabilities); Low Income Housing Tax Credit (LIHTC) housing; and Housing Choice Vouchers (HCV). Other publicly supported housing relevant to the analysis includes

under their inventory with a wide variety of populations of different agency types and geographies with unique fair housing issues. Note that in completing the Assessment Tool, program participants must use the HUD-provided data, as well as local data and local knowledge, and information received in the community participation process.

Disparities in Access to Opportunity. In order to reduce burden while still eliciting a meaningful fair housing analysis, HUD has clarified that for PHAs that do not administer the Housing Choice Voucher Program (HCV), the regional analysis part of this section is not required. However, if PHAs receive information during community participation about regional disparities in access to opportunities, which is relevant to the PHA's service area, such information must be considered. Due to data limitations for PHAs and QPHAs in rural areas outside of CBSA regions, program participants can request technical assistance for additional guidance on how local data and knowledge may be used to respond to questions on disparities in access to opportunity in PHA service areas.

Assessment of Past Goals, Actions and Strategies: HUD has clarified when PHAs must complete this section. This section may be inapplicable for PHAs that have not previously submitted AFHs or an Analysis of Impediments. However, PHAs are to indicate what fair housing goals were selected by the PHAs in past Analyses of Impediments (if prepared jointly with a local government) or Assessments of Fair Housing, if applicable.

Fair Housing Analysis of Rental Housing. The questions in this section have been streamlined and revised to reduce burden while still eliciting a meaningful fair housing assessment.

housing funded through state and local programs, other federal agencies, such as USDA and VA, or other HUD-funded housing not captured in the five categories listed above.

Other Publicly Supported Housing Programs. The questions and structure of this section have been edited to tailor the analysis to PHA program operations and reduce burden while still obtaining a meaningful fair housing analysis. HUD has clarified which types of other publicly supported housing the PHA must analyze.

Local Data and Local Knowledge. HUD has clarified the instructions in the Tool regarding local data and local knowledge—including where local data and local knowledge is particularly useful because HUD data is not provided or is limited. It has reiterated in the instructions to the Tool that the phrase “subject to a determination of statistical validity by HUD” is included to clarify that HUD may decline to accept local data that HUD has determined is not valid but not that HUD will apply a rigorous statistical validity test for all local data. In addition, HUD will provide additional further guidance to PHAs on potential sources of additional information or options for partnering with outside agencies, for example in relation to disparities in access to opportunity.

Maps and Tables. The accompanying instructions have been revised to reflect the appropriate Map and Table numbers of HUD-provided data that program participants must use in answering each question of the Assessment Tool. Descriptions of HUD-provided maps are available in Appendix B of the Assessment Tool instructions, and descriptions of HUD-provided tables are available in Appendix C.

Segregation. In the Assessment Tool, HUD has clarified the definition of “segregation” by referencing the regulatory definition and has noted that in identifying areas that may be segregated or integrated, program participants should take care to ensure they are focusing on all protected characteristics, and not solely focus on minority populations in their jurisdictions and regions. HUD has also included instructions related to analyzing segregation in so-called

“majority-minority” communities and where there are concentrations of particular national origin, ethnic, or religious groups in their jurisdictions and regions.

Answering Questions in Collaborations. HUD has added language to the instructions to the Tool which reminds PHAs that are collaborating to note which contributing factors apply to which or all of the program participants. HUD has also added language that reminds PHAs that are collaborating that each program participant is responsible for answering the Assessment of Past Goals, Actions, and Strategies questions (as discussed above).

C. Responses to Significant Issues Raised by Public Commenters on the 30-Day Notice

1. Specific Questions Posed by HUD in the 30-Day Notice

In the 30-day notice, HUD posed a series of questions for which HUD specifically sought comment.

1. Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

In response to this question, there were commenters who stated that completion of the Assessment Tool is not necessary for the proper performance of agency functions and will not have practical utility, because the commenters are already committed to and practicing deconcentration efforts under the HCV Program. Commenters stated that the Tool was a burden, particularly on small PHAs which lack the staff capacity and expertise to complete the Assessment and on small rural PHAs. A commenter was concerned that their agency would become “troubled.” Commenters expressed concern that nothing would be done with the information collected and that the Tool required PHAs to become reporting services. The commenters stated that they lack the funding to complete the Assessment, and High Performing PHAs should be exempt from the regulation until funding is returned and increased. A

commenter noted that the approach ignores proportionality and local context, and in smaller communities with only one high school, there are no disparities in access to opportunity.

Commenters stated that QPHAs in particular have little influence over factors in the region.

Another commenter noted that some questions and terminology are broad and vague.

HUD Response: HUD continues to submit that the Assessment Tool has substantial utility for program participants in assessing fair housing issues, identifying significant contributing factors, formulating meaningful fair housing goals, and ultimately meeting their obligation to affirmatively further fair housing. One of the primary purposes of the Assessment Tool is to consider a wide range of policies, practices, and activities underway in a program participant's jurisdiction and region and to consider how its policies, practices, or activities may facilitate or present barriers to fair housing choice and access to opportunity, and to further consider actions that a program participant may take to overcome such barriers. The series of questions in the Assessment Tool enables program participants to perform a meaningful assessment of key fair housing issues and contributing factors and set meaningful fair housing goals and priorities. The Assessment Tool also clearly conveys the analysis of fair housing issues and contributing factors that program participants must undertake. In essence, HUD submits that the Assessment Tool, and the entire AFH approach, better implements the AFFH mandate under the Fair Housing Act than the Analysis of Impediments to Fair Housing Choice (AI).

In terms of resource limitations, HUD is aware that PHAs may be limited in the actions that they can take to overcome barriers to fair housing choice and that the AFH process does not mandate specific outcomes. The purpose of the AFH is for PHAs to identify fair housing issues and develop local solutions based on available resources. However, that does not mean that the PHA cannot take any action, or that the PHA should not strive to first understand the fair housing

issues facing their communities and then work to overcome barriers to fair housing choice or disparities in access to opportunity. HUD has taken steps to streamline the Assessment Tool to reduce burden, while still maintaining a meaningful fair housing analysis. HUD has issued guidance on how program participants may establish appropriate goals to address contributing factors and fair housing issues that are beyond their direct control or PHA expertise. HUD has added clarifying instructions regarding prioritization of contributing factors and setting goals, consistent with the AFFH Final Rule and AFFH-related guidance. These edits state that, “Program participants have discretion, within the requirements of the AFFH Rule, to analyze and interpret data and information, identify significant contributing factors, and set goals and priorities using the Assessment Tools provided by HUD. As more fully discussed in the guidance on HUD’s review of AFHs, HUD will consider local context and the resources the program participant has available.” It is HUD’s stated policy that PHAs should be able to complete the assessment tool using their own available staff without the need to hire or contract for outside consultants. For instance, a cost limitation is one factor built directly into the regulatory definition of the term, “local data.” HUD has also issued a public guidance document providing further information on the standards HUD will use to review AFH submissions. As stated in this guidance, “HUD does not expect program participants to hire statisticians or other consultants to locate and analyze all possible sources of local data.” Furthermore, the guidance states, “HUD’s review of AFHs will likewise take into consideration the different circumstances of individual program participants and their varying locales and available resources.” See “Guidance on HUD’s Review of Assessments of Fair Housing” available at: <https://www.hudexchange.info/resources/documents/Guidance-on-HUDs-Review-of-Assessments-of-Fair-Housing-AFH.pdf>. As discussed above, HUD has tailored questions to

PHAs' programmatic operations. HUD has also made key changes to the instructions to clarify issues raised by the commenters including the scale and scope of the service area and regional analysis that is required. For example, PHAs that do not administer the Housing Choice Voucher Program would not be required to conduct the regional analysis part of the Disparities in Access to Opportunity section. However, if PHAs receive information during community participation about regional disparities in access to opportunities, which is relevant to the PHA's service area, such information must be considered. HUD has also provided further instructions about the HUD-provided data in maps and tables and where local data and local knowledge may be most important, such as the Disparities in Access to Opportunity and Disability and Access sections of the analysis. These clarifications include that, "The questions in the Assessment Tool are written broadly by HUD to enable PHAs in many different parts of the country to identify the fair housing issues that are present in their service areas and regions. PHAs should provide an analysis based on the HUD-provided data with respect to the fair housing issues analyzed in the AFH, as opposed to providing an inventory of what the data show." HUD also expects that PHAs will have the benefit of local data and local knowledge, including information obtained through the community participation process, to conduct an appropriate AFH.

PHAs are required to identify the fair housing issues that are present in their service areas and regions, as even issues beyond the PHA's control can affect the population that the PHA serves and the PHA's operations, and influence the PHA's actions to affirmatively further fair housing within its own programs. HUD recognizes that some of these issues are outside of the PHA's control, and as more fully discussed in HUD guidance, the AFH planning framework, including prioritization of significant contributing factors and setting goals, allows for program participants to match their goals to their local circumstances and to set goals within the PHA's unique control. The AFFH process also envisions the possibility of adopting innovative and

collaborative goals and priorities as a way of attempting different approaches that may yield positive fair housing outcomes. This may be useful in helping PHAs to address disparities in access to opportunity (access to proficient schools, transportation, employment clusters) and contributing factors, particularly at the regional level. HUD encourages PHAs and all program participants to work within their communities to develop cooperative approaches to fair housing issues.

2. The accuracy of the agency's estimate of the burden of the proposed collection of information.

Commenters disagreed with HUD's burden estimate and suggested that HUD conduct a more thorough analysis. One commenter estimated that the burden is likely three or four times HUD's estimate of 240 hours. Numerous commenters stated that HUD's estimate of burden was an underestimate of the actual burden that would be required, both for individual PHA respondents and for the total overall estimate. Numerous commenters stated that their PHA did not have adequate staffing or funding that would be needed to complete the assessment tool.

HUD Response: HUD appreciates the comments provided on HUD's burden estimate. HUD has made a number of improvements to reduce burden on program participants while conducting a meaningful fair housing assessment that will result in appropriate fair housing outcomes. These steps include the addition of the streamlined analysis (insert) as part of all three assessment tools and the commitment to develop a separate standalone assessment tool for QPHAs. Through this Notice, HUD is also announcing the expansion to the threshold number of units for a PHA to use the insert from 550 units to 1,250 units.

HUD intends to continue to monitor and assess the impact and burden and implementation costs of the AFH process on PHAs, including on the range of different program participants. This will include working directly with PHAs and other program participants and

through the provision of technical assistance. It will also include conducting a process and implementation study based on actual program participant experience, including a review of costs and staff burden as well as barriers or obstacles faced by PHAs and other program participant across different types, sizes and locations. HUD expects to prepare revised workload and costs estimates as PHAs prepare and submit actual AFH plans in the future. Going forward, HUD will review the appropriateness of this threshold and the possibility of increasing the 1,250-unit threshold in the future it based on experience with AFH submissions. HUD will also assess actual burden on all program participants in order to consider the need for additional improvements and prior to the renewal of the assessment tool at the end of the 3-year PRA approval period.

3. Ways to enhance the quality, utility, and clarity of the information to be collected.

A commenter suggested that instead of using a separate Assessment Tool, HUD should expand the requirements of Consolidated Plans to include fair housing, as the Assessment Tool is duplicative of the CDBG entitlement community's AFH. Another commenter suggested that HUD ask PHAs what their service area is, as this will not be an additional burden for PHAs. A commenter noted that HUD should further enhance HUD-provided maps to allow PHAs to accurately and clearly view their data.

HUD Response: HUD appreciates commenters' suggestions for enhancing the quality, utility, and clarity of the information to be collected. The Assessment Tool, and the entire AFH approach, implements the AFFH mandate under the Fair Housing Act. The Tool facilitates program participants' meaningful analysis of key fair housing issues and contributing factors to fair housing issues, and that analysis is intended to lead them to set meaningful fair housing goals and priorities. This meaningful analysis of fair housing issues is not captured as fully in

other HUD planning documents that have different purposes than Affirmatively Furthering Fair Housing.

As part of the development of the AFFH Data and Mapping Tool (AFFH-T) changes for PHAs, HUD will be gathering information on PHA service areas and will add this significant new information to the AFFH-T as it becomes available. With respect to enhanced ways to make maps and data easily accessible to program participants, HUD continues to work to make the HUD-provided data and maps easily accessible and easily readable to its program participants, including unique functionality for PHAs, such as the ability to view only the PHA's housing stock and vouchers.

4. Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Commenters provided a number of suggestions to HUD to minimize the burden of collection of information from PHAs. A commenter suggested that HUD create and provide a sample completed AFH for different sized PHAs. A commenter stated that HUD should provide suggestions for defining R/ECAPs in rural areas. A commenter noted that HUD should simplify the Assessment Tool to the greatest extent possible so that PHAs would not have to rely on expensive consultants. Multiple commenters stated that the Assessment Tool asked for information beyond a PHA's mission, expertise, or influence, such as a regional analysis and analysis of access and barriers to transportation, schools, and work. Commenters recommended that HUD not require a regional analysis outside of a PHA's service area or where data is not provided by HUD. Another commenter suggested that PHAs that serve more than two counties – i.e., the case of regional PHAs – should define their own regions.

A commenter expressed concern that HUD is using an online system for the Assessment Tool, because the agency must successfully implement web-based information collecting and keep its reporting systems up to date. Another commenter found electronic submissions of AFH responses helpful, and requested that HUD report back data that it has already collected in other formats from PHAs to reduce burden.

A commenter is encouraged by HUD's application of the rental housing analysis to only PHAs that operate voucher programs, but thinks the analysis is still too broad because the data is not readily available. A commenter noted that HUD should not require program participants to analyze demographics because HUD already has this information. Instead, HUD should provide PHAs with the comparison of the demographics of occupants of the PHA's housing to the community. HUD also has thorough demographic information of RAD properties and should provide it to PHAs, instead of requiring PHAs to again provide it to HUD. HUD requires PHAs to submit data to HUD on the location of assisted housing in the locality and the region, but HUD should provide that to PHAs. HUD should provide data to support analysis of the change in the location of rental housing over time, or eliminate it from the tool. HUD should not require PHAs to identify the location of LIHTC, but HUD should instead identify the locations. The commenter states that the analysis of access to opportunity for other assisted housing is duplicative. The commenter also notes that the Fair Housing Enforcement section requires an inventory of fair housing laws, and HUD already has this information and instead should provide it to PHAs.

Commenters appreciated that HUD removed public housing from the analysis of rental housing, as well as the inclusion of the QPHA insert and drafting of a separate QPHA tool, as this will minimize burden for PHAs with smaller operations.

HUD Response: HUD thanks commenters for their suggestions for minimizing burden. HUD has worked to streamline the Assessment Tool and provide clarifying instructions to simplify the process for program participants that are completing the AFH, while providing a meaningful framework in which program participants can analyze the fair housing issues and contributing factors in their communities and set meaningful goals and priorities. This notice clarifies that the regional analysis across multiple sections is not meant to be interpreted as an inventory of local policies and practices in all of the local governments throughout the region. The Tool emphasizes that the solicitation of information on whether there are any demographic trends, policies, or practices that could lead to higher segregation in the jurisdiction or region in the future, is not to be read as HUD seeking an inventory of local laws, policies, or practices. Understanding the demographic patterns and trends of a PHA's service area contextually within the PHA's region is important to identify fair housing issues and related contributing factors affecting the PHA's operations and inform goal setting designed to affirmatively further fair housing, especially for portability and increasing choice in the housing choice voucher program. Fair housing issues and contributing factors are often not bound by geographic or political boundaries. PHAs are not expected to conduct a neighborhood-by-neighborhood or jurisdiction-by-jurisdiction analysis, but instead are asked to identify patterns and trends over time. PHAs are advised to begin the regional analysis starting with areas immediately surrounding the PHA service areas. This analysis will cover residential living patterns, segregated and R/ECAP areas more integrated areas of opportunity (with access to proficient schools, public transportation and employment opportunities) in the immediate jurisdictions outside of their service area where there is adequate rental supply available for lease-up and utilization by voucher holders. The regional analysis will also use integrated areas of opportunity that are feasible for new

construction of affordable housing that will enhance mobility and decrease concentration of protected class while adding to the supply of affordable, low-income housing. HUD will continue to provide data through the AFFH-T as it becomes available.

HUD is exploring options for posting AFHs as an online resource for program participants and the public.

HUD appreciates comments regarding simplifying analysis and believes in this final version of the Assessment Tool designed for PHAs that it has undertaken significant steps to do so, including tailoring of questions, instructions, and contributing factor descriptions to the public housing and Housing Choice Voucher operations of PHAs. Regarding the comment on regional analysis and analysis of transportation, schools, and work to reduce disparities in access to opportunity for protected classes and recipients of publicly supported housing, HUD believes that such analyses are important to achieving meaningful fair housing outcomes. In particular, a PHA's regional analysis provides a contextual baseline for PHAs to understand the residential living patterns, rental market, and the unique fair housing issues and challenges facing their operations and service areas. In addition, such a regional analysis is important for understanding fair housing outcomes in the broader region related to mobility, portability, and collaborative efforts and goals with neighboring organizations, including other PHAs, such as the use of shared waitlists, landlord lists, and other collaborative efforts designed to address barriers to meaningful fair housing choice involving voucher mobility or production of affordable housing in areas of opportunity throughout a region. To achieve these types of goals, regional analysis and collaboration or information sharing is necessary among PHAs and local governments. With respect to analysis of transportation, schools, and work, HUD notes that disparities in access to such opportunities affect the PHA's assisted residents, and waitlisted residents, but also have

significant importance from a fair housing perspective when considering goals such as how to increase voucher utilization in areas of opportunity to overcome disparities by protected classes in accessing such opportunities and when siting affordable housing. HUD has taken steps to streamline this analysis, while maintaining efforts at appropriate fair housing outcomes. Analysis of disparities in access to opportunity for the PHA's service area can be helpful for considering how the PHA's own assets (and HCVs where applicable) are positioned and in identifying places in the surrounding area that might be appropriate for additional new affordable housing opportunities when possible. Some of these issues may be beyond the scope of expertise for PHA staff, but consultation and cooperation with government agencies may be helpful. HUD acknowledges that staffing and funding realities may limit the level of inter-governmental and inter-agency interaction that is possible, as well as the availability and cooperation of other agencies or organizations to participate or to engage in information sharing, mutual analysis, or goal setting. Nonetheless, shared information and resources may assist PHAs and other agencies with meeting fair housing objectives. In support of this goal of PHAs performing a fair housing analysis and to address the workload concerns of PHAs, this Notice clarifies that HUD has increased the threshold for PHAs with 1,250 or fewer combined units to use the insert.

HUD appreciates the comment regarding the unique service areas of regional PHAs and has provided a baseline set of data and expectations as far as regional analysis for such entities. The instructions and this notice provide more information to PHAs on how to identify the required regional analysis based on their different geographic areas. HUD notes that all program participants may conduct analysis beyond the baseline required by the Assessment Tool.

HUD appreciates the comments regarding the provision of data. HUD continues to evaluate methods of reliably providing additional nationally available sources of data, including

data that may be provided in other HUD programs, to program participants.

5. Are there other ways in which HUD can further tailor this Assessment Tool for use by PHAs?

If so, please provide specific recommendations for how particular questions may be reworded while still conducting a meaningful fair housing analysis, or questions that are not relevant for conducting a meaningful fair housing analysis, or other specific suggestions that will reduce burden for PHAs while still facilitating the required fair housing analysis.

Commenters noted ways in which HUD could further tailor the Assessment Tool for PHA use. One commenter suggested that HUD create a shorter guidance document specifically from the PHA's perspective. Commenters noted that HUD should tailor the Tool to focus more on housing preservation strategies and HUD should eliminate the analysis of rental housing, since it is not applicable to PHAs. Another commenter stated that HUD should provide a streamlined set of questions for QPHAs that choose not to collaborate.

HUD response: HUD thanks commenters for their suggestions. HUD will issue further guidance to assist program participants, including PHAs, in completing their AFHs. HUD appreciates the suggestion to specifically release a streamlined guidance document for smaller PHAs. HUD will continue to provide guidance involving the balanced approach and mobility and comprehensive community revitalization strategies to address areas where PHAs engage in preservation and new construction of affordable housing in their jurisdictions. HUD added a question to the insert for PHAs to identify areas where PHAs engage in comprehensive community revitalization strategies and to address fair housing and disparities in access to opportunity issues. HUD has committed to developing a fourth Assessment Tool specifically for use by QPHAs who choose to conduct and submit an individual AFH or that collaborate with other QPHAs to conduct and submit a joint AFH.

6. Whether HUD should include any other contributing factors or amend any of the descriptions of the contributing factors to more accurately assess fair housing issues affecting PHAs' service areas and regions. If so, please provide any other factors that should be included or any additional language for the contributing factor description for which changes are recommended.

A number of commenters provided other contributing factors that they believe HUD should add to the Assessment Tool. A commenter suggested adding adverse housing decisions and policies based on criminal history as a factor. Another suggestion was to add landlords exiting the HCV program into the description of the contributing factor, "displacement of residents due to economic pressures." A commenter proposed that lack of public and private investment should not be merged into one contributing factor, but suggested that HUD add "and/or" between the two if it does merge the factors. The commenter also mentioned that HUD should add "discrimination on the basis of limited English proficiency" to the "lack of meaningful language access" contributing factor, and this should make reference to HUD and USDA's LEP guidance and Title VI. A commenter suggested adding lead-based paint to the environmental health hazards factor, editing the factor regarding "survivors of domestic violence" to be consistent with the Violence Against Women Act by including survivors of sexual assault, dating violence, and stalking, adding in a factor for displacement and lack of housing support for victims of harassment based on membership in a protected class, and including individuals with disabilities under the "nuisance laws" factor. The commenter applauded HUD's addition of "Policies related to payment standards, FMR, and rent subsidies," but suggested that it also include PHA's policies and procedures for determining rent reasonableness for the Housing Choice Voucher program. A commenter suggested that "Private Discrimination" should not have been omitted, and that HUD should add it back into the

Assessment Tool. Another commenter mentioned that contributing factors that are only addressed in some sections, such as lack of meaningful language access, should be included in all sections. The commenter suggested adding “limitations of federal regulations,” “low vacancy cities,” and place-based nature of public housing as contributing factors. Another commenter noted that “access to reliable automobile transportation” should be added to the Disparities in Access to Opportunity section. A commenter noted that HUD should remind Program Participants that “PHAs are required to identify contributing factors that are not listed if that contributing factor creates, perpetuates, contributes to, or increases the severity of at least one fair housing issue.”

Other commenters suggested that HUD limit contributing factors in the Assessment Tool. Commenters noted that contributing factors should be limited to those that are “housing related.” A commenter mentioned that in the segregation section of the tool, the contributing factor related to admissions and occupancy policies and procedures should be limited to a discussion of only the PHA’s policies and procedures, because otherwise it is too broad and requires PHAs to collect and analyze policies from hundreds of properties.

HUD Response: HUD thanks commenters for their suggestions. In the final version of the Assessment Tool, HUD has tailored the descriptions of the contributing factors so that they better apply in the context of a PHA’s analysis. HUD will continue to update and provide guidance to assist PHAs as they consider contributing factors of fair housing issues in completing their AFHs.

While HUD has amended some contributing factors descriptions so that they are better tailored to meet the ways in which PHAs operate, HUD reminds program participants that they must identify contributing factors for their service area and region if that factor significantly

creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. HUD acknowledges that program participants may need to identify contributing factors that are outside of their control or the boundaries of their service areas. If the program participant has met its planning requirements by identifying such factors, but addressing those factors is outside that program participant's control, the program participants are expected to undertake appropriate, good faith collaborative and outreach efforts with local government, private sector and other applicable governmental entities related to goal-setting to address the identified fair housing issue. HUD notes that addressing these types of contributing factors may require a collaborative approach that includes local, state, and private sector entities, and HUD encourages such collaboration.

HUD appreciates the suggestions from commenters of other contributing factors that may create, contribute to, perpetuate, or increase the severity of one or more fair housing issues in the PHA's service area or region. HUD agrees with the commenter that suggested that vacancy rates in cities may contribute to, perpetuate, or increase the severity of one or more fair housing issues, and has noted this in the updated definition of "lack of access to opportunity due to high housing costs." HUD accepts the comment to add "and/or" between "private" and "public" in the contributing factor related to investment. HUD thanks the commenter for the recommendation to revise the "domestic violence" contributing factor so that it is consistent with VAWA, and has accepted this recommendation. HUD has also added a definition of "private discrimination" into the tool, in combination with "lack of fair housing laws."

7. Whether the inclusion of the "insert" for Qualified PHAs (QPHAs) will facilitate collaboration between QPHAs and non-qualified PHAs, and whether these entities anticipate collaborating to conduct and submit a joint AFH. Please note any changes to these inserts that

(a) would better facilitate collaboration; (b) provide for a more robust and meaningful fair housing analysis; and (c) encourage collaboration among these program participants that do not anticipate collaborating at this time.

Commenters support the inclusion of the QPHA insert and commended HUD for reducing administrative burden, and some suggested that HUD go even further. Commenters noted that all PHAs should be able to use the QPHA insert, as this will facilitate PHAs to collaborate with States, and the QPHA insert should be the approach for all program participants, regardless of whether they are collaborating. A commenter noted that the insert should not require QPHAs to conduct a regional analysis. Commenters believe that the QPHA insert will facilitate collaboration, and offered suggestions for how to further facilitate this collaboration. One commenter noted that a way to do this is to integrate data from multiple agencies across tables and maps. Another commenter asked HUD to provide assurances that PHAs will be able to certify under their State's plan.

Other commenters appreciated HUD's efforts to reduce burden on small entities, but suggested that the QPHA insert be eliminated or revised in order to ensure a meaningful analysis. A commenter warned that the QPHA insert could send a message to QPHAs that they will be held to a different standard of analysis and it risks creating confusion. The commenter was particularly concerned that HUD combined all of the opportunity indicators into one question in the insert. The commenter suggested that the policies and practices section of the Publicly Supported Housing section should ask the QPHA to consider its Admission and Continued Occupancy Plan (ACOP) and Administrative Plans more broadly, as this merely requires QPHAs to evaluate aspects of their current policies and will not increase burden. PHAs should report on

grounds for denial of admission, evictions, or terminations of subsidies, policies regarding accessibility for persons with disabilities and to LEP persons.

HUD Response: HUD thanks commenters for their responses to the insert. By allowing the inserts for some PHAs, HUD has sought to reduce burden on smaller program participants, while still facilitating a robust analysis of fair housing issues that will allow these PHAs to set meaningful fair housing goals and priorities. The approach adopted attempts to address the issue of burden for these smaller agencies, by organizing the identification of contributing factors for the four fair housing issues (Segregation, R/ECAPs, Disparities in Access to Opportunity, and Disproportionate Housing Needs) in one step. This is intended to reduce any unnecessary duplication of effort and to better focus the analysis and identification steps to help produce meaningful fair housing goals. HUD has decided to reduce the burden for PHAs with 1,250 or fewer combined public housing and Housing Choice Voucher units by permitting them to also use the insert. At this time, HUD declines to extend the use of the insert to include all program participants but will continue to explore ways to reduce burden, regional HCV mobility planning and execution, and synchronization of AFH and PHA Agency planning, while appropriate analysis of fair housing issues is undertaken. HUD will continue to consider ways to incentivize and expand collaborations among PHAs to establish regional HCV mobility and portability efforts to increase tenant choice and utilization, PHA cooperation, and landlord outreach across multiple PHA service areas and regions. However, HUD has designed Assessment Tools that allow for collaboration between local governments and PHAs with 1,250 or fewer units and States and PHAs with 1,250 or fewer units. HUD has also committed to developing an additional Assessment Tool specifically for use by Qualified PHAs (QPHAs) who choose to conduct and

submit an individual AFH or that collaborate with other QPHAs to conduct and submit a joint AFH.

With respect to the comment about PHAs certifying under their State's plan, HUD notes that PHAs will be able to partner with States when the State acts as the lead entity in the Assessment Tool designed for States, but that each program participant is ultimately responsible for its own assessment of fair housing and certifications. HUD will continue to seek ways to flexibly allow for collaborations by PHAs with other program participants.

HUD disagrees with the comment that the addition of streamlined Assessment Tool inserts for smaller program participants might inadvertently send a message that such smaller program participants are being held to a different standard of analysis. As HUD stated in the Preamble to the AFFH Final Rule, "...HUD commits to tailor its [Assessment Tools] to the program participant in a manner that strives to reduce burden and create an achievable AFH for all involved. HUD intends to provide, in the Assessment Tool, a set of questions in a standard format to clarify and ease the analysis that program participants must undertake. The Assessment Tool, coupled with the data provided by HUD, is designed to provide an easier way to undertake a fair housing assessment." 80 FR 42272, at p. 42345 (July 16, 2015). Moreover, the inclusion of the inserts is also intended to facilitate joint and regional partnerships with smaller program participants. Such partnerships can result not only in improved planning and fair housing analysis but in intergovernmental and interagency cooperation and collaboration in goal setting, program operations, and results.

HUD has revised the Policies and Practices question in the insert, as it did in the Local Government tool, to elicit a more meaningful fair housing analysis by prompting PHAs of the

types of policies and practices to consider with a focus on HCV portability, mobility, balanced approaches and comprehensive community revitalization strategies.

8. Whether HUD's change to the structure and content of the questions in the Disparities in Access to Opportunity section with respect to the protected class groups that PHAs must analyze is sufficiently clear and will yield a meaningful fair housing analysis. Additionally, HUD specifically solicits comment on whether an appropriate fair housing analysis can and will be conducted if the other protected class groups are assessed only in the "Additional Information" question at the end of the section, as opposed to in each subsection and question in the larger Disparities in Access to Opportunity section. HUD also requests comment on whether it would be most efficient for PHAs to have the protected class groups specified in each question in this section. If so, please provide an explanation. Alternatively, HUD requests comment on whether each subsection within the Disparities in Access to Opportunity section should include an additional question related to disparities in access to the particular opportunity assessed based on all of the protected classes under the Fair Housing Act.

Commenters expressed concern that the Assessment Tool does not require program participants to consider local data and local knowledge in completing the Disparities in Access to Opportunity section. Commenters suggested that PHAs should consider other protected classes under the Fair Housing Act and other fair housing laws, including sex and disability. Since the questions currently instruct program participants to answer based on HUD-provided data, and national data on disabilities is limited, commenters noted that this section excludes persons with disabilities. Commenters suggested that program participants use local data and local knowledge, to the extent available, in the context of the opportunity indicator at issue to consider other protected classes.

HUD Response: HUD thanks commenters for their suggestions. Note, the regional analysis in the Disparities in Access to Opportunity section is only applicable to PHAs that administer HCVs. HUD believes that the structure of this section of the Tool in the version of the Tool that accompanied the 30-day PRA notice presents the appropriate questions to yield a meaningful analysis. HUD notes that in the final version of the Assessment Tool designed for PHAs, the instructions clarify for which questions and which protected classes HUD is currently providing data and for which questions local data and local knowledge, including community participation, will be used to answer questions regarding other protected classes. With respect to access to opportunity for individuals with disabilities, the instructions note that the second question in each section of the Disparities in Access to Opportunity section notes that disability may be identified either in such responses or in the responses related to disparities in access to opportunity in the Disability and Access section, or both, provided all required aspects are analyzed.

9. What sources of local data or local knowledge do PHAs anticipate using with respect to their analysis? Please specify which sections of the Assessment Tool PHAs anticipate using local data and local knowledge. For example, what sources of local data or local knowledge, including information obtained through the community participation process and any consultation with other relevant governmental agencies, do PHAs anticipate using for the service area as compared to the region regarding disparities in access to opportunity? Are there any different sources of local data or local knowledge for the question on disparities in access to opportunity in the publicly supported housing section?

Commenters noted a number of sources of local data and local knowledge that they anticipate using. These sources include their own internal demographics data collected through

the annual review process for its public housing and Section 8 programs; data through a specific PHA's open portal on transportation, education and schools, environment, housing and development, and health and human services; community outreach to stakeholders, local service providers, local government agencies, program participants, and advocates; and internal information systems. A commenter noted it would use information from the PHA's housing and vacancy survey, as conducted by the Census Bureau, which enables PHAs to conduct extensive analysis of the locality's residential population and households, race/ethnicity, household composition and types, crowding and doubling-up, immigration, incomes and labor market, education, homeownership, the housing inventory, vacancies and vacancy rates, rent levels, affordability, and conditions of housing and neighborhoods including trends. A commenter mentioned that it will use local data and local knowledge in analyzing factors that prevent clients from accessing housing or constitute other barriers to opportunity. One commenter expressed concern that using local data and local knowledge will divert agency staff from completing their housing-related duties.

HUD Response: HUD thanks commenters for their responses. As HUD provides continued guidance and information on how program participants can use local data and local knowledge to facilitate a meaningful analysis of fair housing issues and goal setting and priorities, it will consider how to use this helpful information from commenters. HUD anticipates that it will continue to update guidance materials to identify potential sources of local data and local knowledge, including sources identified by public commenters through the various public comment periods associated with the Paperwork Reduction Act process associated with the various Assessment Tools. HUD also encourages commenters and other stakeholders to

participate in and provide information during community participation when PHAs and other program participants in their communities are preparing to submit their AFHs.

(10) Whether the instructions to the Assessment Tool provide sufficient detail to assist PHAs in responding to the questions in the Assessment Tool. If not, please provide specific recommendations of areas that would benefit from further clarity.

A commenter requested that HUD provide a streamlined guidance document to assist in completing the Assessment Tool and using the instructions.

A commenter stated that instructions on goals and priorities are not sufficient, and it is unclear what factors would not meet the standards for prioritization.

HUD Response: In this final version of the PHA Assessment Tool, HUD has tailored the instructions to provide PHAs with more guidance as they complete the Assessment Tool, including instructions related to contributing factors, prioritization, goal-setting and the scope of regional analysis in the AFH. HUD will continue to explore options for further guidance beyond the instructions. HUD will provide additional guidance for specific questions where local data and knowledge can be used to respond to specific questions due to HUD data limitations.

(11) How can HUD best facilitate the analysis PHAs must conduct with respect to disparities in access to opportunity? For example, are questions based on the overall service area and region of the various opportunity indicators the best way for PHAs to identify access to opportunity with respect to their residents, including voucher holders? With regards to disparities in access to opportunity, how might the PHA identify contributing factors and set goals for overcoming disparities in access to opportunity?

Some commenters suggested that HUD make this section optional for PHAs because these questions are not relevant to a PHA's operations. They note that PHAs have little control over transportation, employment, and schools in a large metropolitan area. One commenter stated that in particular, PHAs should not be required to analyze job training data. Another commenter noted that the analysis of disparities in access to opportunity affecting individuals with disabilities is burdensome because data is not available and it should be deleted.

HUD Response: HUD disagrees with commenters who stated that the questions asked in the Disparities in Access to Opportunity section of the Tool are not relevant to a PHA's operations. PHAs are required to identify the fair housing issues and disparities in access to opportunities that are present in their service areas and regions, as even issues beyond the PHA's control can affect the residents that the PHA serves. Indeed, some PHAs may have little influence over education, transportation, and job-related activities. HUD notes, however, that PHAs are responsible for ensuring that their programs and activities are administered in a manner to affirmatively further fair housing, and that PHAs are responsible for ensuring the administration of such programs and activities do not perpetuate, contribute to, or exacerbate fair housing issues. HUD recognizes that some of these issues may be outside of the PHA's control and staff expertise, and as more fully discussed in HUD guidance and in this notice, the AFH planning framework, including prioritization of significant contributing factors and setting goals, allows for program participants to match their goals to their unique local circumstances. HUD notes that while PHAs should identify all relevant contributing factors, even if they are outside of the PHA's control, PHAs should select goals that are within the control of the PHA, and that are realistically designed to affirmatively further fair housing.

HUD notes that addressing certain types of contributing factors may require a collaborative approach that includes local, State, and private sector entities. Program participants are expected to identify contributing factors regardless of their ability to exert control over a contributing factor or their proximity to the contributing factor identified if that factor significantly creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. However, if the program participant has met its planning requirements by identifying such factors, but addressing those factors is outside that program participant's control, the program participants are expected to undertake good faith collaborative and outreach efforts in the form of appropriate goals with local government, private sector, and other applicable governmental entities to address the identified fair housing issue and related contributing factors.

(12) What additional guidance would be useful to PHAs to assist in conducting the fair housing analysis in the Assessment Tool? In particular, which fair housing issues and contributing factors would benefit from additional guidance? For example, in the disparities in access to opportunity section, what guidance would PHAs benefit from?

A commenter suggested that to provide guidance, HUD should publish sample AFHs from various size program participants. Another commenter stated that HUD should provide additional guidance on the prioritization of contributing factors and goals.

HUD Response: HUD thanks commenters for their suggestions and will continue to explore ways to facilitate meaningful AFHs by issuing further guidance. HUD is exploring options for posting AFHs as an online resource for program participants and the public. HUD has provided additional guidance in the Tool's instructions about prioritization of contributing factors and goals.

(13) In the publicly supported housing section, there are several questions related to assisted housing programs that are not owned or operated by the PHA. Are these questions sufficiently clear, or would additional instructions beyond those that are provided be helpful to PHAs in answering these questions? Are there other or different questions that would facilitate the PHAs' analyses of publicly supported housing, specifically for the other categories of publicly supported housing included in this Assessment Tool?

A number of commenters had specific suggestions for improving this section. A commenter suggested questions to be added to the Assessment Tool regarding the Housing Choice Voucher (HCV) program and geographic mobility. The commenter urged HUD to include these questions in the main Assessment Tool and not only in the QPHA insert, because this is HUD's largest assisted housing program, and persons receiving HCV assistance often face barriers to mobility. Another commenter suggested that HUD ask about waiting list demographics. A commenter suggested that the word "voucher" be added to the phrase "project-based developments" in Question V.D.1.b.i. to clarify that this refers to properties where the PHA has entered into a contract to provide project-based voucher assistance. A commenter suggested adding to the end of Question V.D.2.b.iv.A, which asks about LIHTC, "and whether there are differences in the neighborhood attributes of LIHTC developments where the PHA's vouchers are in use by members of protected classes." A commenter stated that PHAs participating in RAD should be asked whether their tenants are informed of their Choice/Mobility options and are offered moving assistance. Another commenter expressed that PHAs should not have to analyze housing stock outside of its control.

A commenter noted that it supported HUD's balanced approach, but was concerned that PHAs will not make meaningful changes, and therefore requested that HUD keep the balanced approach in perspective when it revises the Guidebook.

HUD Response: HUD appreciates commenters' responses. HUD accepted the commenter's suggestion to add the word "voucher" to the phrase "project-based developments" in Question V.D.i.2.a (previously question V.D.1.b.i). HUD has also revised the Tool to help PHAs to better analyze the fair housing impacts on persons in the HCV program by encouraging program participants to do outreach to HCV holders while conducting community participation, and by asking about HCV holders in the questions within this section.

HUD disagrees with commenters who noted that PHAs should only analyze housing stock in its control. Issues beyond the PHA's express control can affect the participants that the PHA serves.

In a broader context related to the balanced approach to affirmatively furthering fair housing, HUD has made a number of modifications to the Assessment Tool to recognize the importance of preserving existing affordable housing in connection with affirmative fair housing goals and strategies in connection with community revitalization, as well as modifications with respect to mobility. The balanced approach does not relieve PHAs of their duties to set meaningful goals and priorities to overcome fair housing issues in their jurisdictions and regions. As HUD's own studies on worst case needs for affordable housing make clear, there is an ongoing national crisis in housing affordability that particularly affects lower income families. In many local and regional housing markets, low income households are priced out of the market altogether with some form of income support or housing subsidy being needed to access decent, safe and affordable housing. This makes the preservation of the existing limited supply of long-

term affordable stock a key component of any balanced approach to addressing the fair housing issues and contributing factors identified in assessments of fair housing. At the same time, HUD maintains the importance of mobility solutions in connection with affirmative fair housing goals and strategies, and notes that such strategies are not mutually exclusive.

In support of HUD's commitment to the balanced approach to addressing fair housing issues, a number of key changes have been made to the Assessment Tool:

1) Added the contributing factor on the "Loss of Affordable Housing." This factor was previously released for public comment as part of the Assessment Tool for States and Insular Areas. This contributing factor notes that, "The loss of existing affordable housing can limit the housing choices and exacerbate fair housing issues affecting protected class groups." This factor, along with the contributing factor on "displacement of residents due to economic pressures," allows program participants to recognize the need to preserve affordable housing in areas undergoing economic improvement as a way of maintaining access to opportunity assets for low-income residents and protected class groups as these areas experience increased opportunity.

2) The Assessment Tool has strengthened the connection between the analysis of disproportionate housing needs and the analysis in the publicly supported housing section. These changes include adding an instruction noting that the analysis in these sections can be compared to each other, as well as by clarifying the analysis questions in the insert to compare the demographics of who is receiving housing assistance with disproportionate housing needs. The instructions to the insert have also been clarified to note the policy linkage between this analysis and the overriding housing needs analysis required in the PHA Plan as one possible practical application of the AFH analysis.

3) Adding instructions on LIHTC. The instructions indicate that program participants may distinguish between nine percent and four percent tax credits and the different uses that each can be used for, while analyzing the relation of such tax credit properties to fair housing issues and related contributing factors, including distinguishing for rehabilitation and preservation of affordable housing and for the various priorities available to state allocating agencies in meeting unique housing needs in their jurisdictions, in the context of identifying fair housing issues and related contributing factors.

4) Adding more detail to the instructions for the additional information questions in the Publicly Supported Housing section. These questions provide an opportunity for program participants to reference or highlight efforts intended to preserve affordability in order to meet unmet and disproportionate housing needs in the context of fair housing issues and related contributing factors. The added instructions state that, “Program participants may describe efforts aimed at preserving affordable housing, including use of funds for rehabilitation, enacting tenant right to purchase requirements, providing incentives to extend existing affordable use agreements and preventing Section 8 opt-outs, encouraging the use of RAD conversion and the PBRA transfer authority. Program participants may also describe positive community assets and organizations, including community development corporations, non-profits, tenant organizations, community credit unions and community gardens.”

(14) There have been new questions added to the Disability and Access Analysis section, under ‘Housing Accessibility’ (Questions 2(d) and 2(e)). Are these questions sufficiently clear, or would additional instructions beyond those that are provided be helpful to PHAs in answering these questions? Are there other or different questions that would facilitate the PHAs’ analyses of disability, specifically related to housing accessibility?

A commenter noted that questions in this section regarding disability and access should direct PHAs to consider local data and local knowledge, and HUD should instruct program participants that information gathered in community participation may provide valuable insight into the efficacy of the PHA's actions to engage in effective communications with persons with disabilities. Commenters stated that instructions should provide greater clarity to program participants regarding local data and local knowledge. The commenter noted that instead of instructing program participants to "supplement" HUD-provided data with local data and local knowledge, HUD should instruct program participants that local data and local knowledge "will likely be particularly useful" and PHAs should be required to contact Centers for Independent Living (CILS), provide evidence of the efforts they made to collect local data and local knowledge, and note a lack of local data and local knowledge if there is none available.

A commenter offered suggestions for questions that would further facilitate the PHA's analysis of disability. The commenter stated that in its current form, the Assessment Tool does not consider individuals with disabilities in relation to other barriers and it should consider intersectionality of disability and other protected classes. In this section, the Assessment Tool should ask about low poverty neighborhoods, environmentally healthy neighborhoods, and patterns in disparity in access to opportunity. The commenter offered the example that questions about effective communication should also include LEP.

Another commenter noted that it disagreed with the Assessment Tool's requirement to analyze integration of individuals with disabilities in the regions, and felt it required PHAs to assess Olmstead plans developed by other entities.

HUD Response: HUD has considered the public comments and has removed Question 2(e) under "Housing Accessibility" from the Assessment Tool, and instead explains in

instructions that program participants should “consider policies and practices that impact individuals’ ability to access the housing, including such things as wait list procedures, admissions or occupancy policies (e.g., income targeting for new admissions), residency preferences, availability of different accessibility features, and website accessibility” when responding to Question 2(b) in that section.

HUD encourages PHAs and all program participants to seek the input of stakeholders, such as civil rights and disability rights groups, when conducting its community participation. Stakeholder groups are valuable sources of information and they can provide program participants with local data and local knowledge that will assist the PHA in completing its AFH and conducting a meaningful analysis of fair housing goals and priorities.

HUD thanks commenters for their suggestion that the Assessment Tool consider intersectionality of disability and other protected classes. In the instructions to the Tool, HUD notes that “individuals can be members of more than one protected class, for instance, race, ethnicity, national origin often overlap, as will persons with disabilities with other protected characteristics. PHAs are expected to analyze fair housing issues with respect to individuals with disabilities who are also members of additional protected classes.”

(15) Are there other ways HUD can clarify the questions in the Assessment Tool, for example, through the provision of additional instructions, or different instructions from those that have been provided? Additionally, are there other or different questions or instructions that would better assist State PHAs in conducting their fair housing analysis? Please specify whether a particular section, question, or set of instructions requires clarification.

Commenters suggested that the Assessment Tool should more clearly define the definitions of service area and region. This will help PHAs to understand the exact regional area that must be covered and the data necessary to complete the analysis.

HUD Response: In response to commenters' request for more information regarding the service area and region that PHAs must analyze when completing their AFHs, HUD has added a chart identifying applicable regions for various size PHAs in terms of geography and operations and language to the instructions of the Assessment Tool. Appendix A at Part V: Fair Housing Analysis, explains these definitions in detail. The PHA's region varies based on its service area. The revised instructions to the Assessment Tool now include: (1) a description of the service area, also known as the jurisdiction, of various size PHAs in terms of their authorized geographic operations; (2) a description of the PHA's region for purposes of analysis under the AFFH rule; (3) a description of the HUD-provided data for the PHA's applicable region; (4) instructions related to use of data and identification of fair housing issues and related contributing factors for different size PHAs; and (5) instructions related to rural PHAs, State PHAs, Regional PHAs, and PHAs in Insular Areas.

2. Other Issues Raised by the Public Commenters

PHA Control Over Contributing Factors

Commenters expressed concerns regarding legal exposure resulting from program participants' identification of contributing factors and goals set to address fair housing issues in the AFH. Specifically, commenters were concerned that many contributing factors address issues beyond the program participants' control and/or outside of the program participants' jurisdiction or service area for PHAs. Some commenters have expressed concern about potential litigation

and expressed reluctance with regard to identifying contributing factors and developing goals that are primarily outside of their control or under the jurisdiction of the State or other local governments. These commenters have asked whether HUD acceptance of their AFH goals would shield program participants from litigation.

The commenters requested that HUD take into account whether past goals may not be achieved due to a lack of external support, a lack of collaborative action from State or local government entities, or private sector investment when reviewing submitted AFH plans.

Commenters have requested that HUD shield program participants from stakeholder litigation if a program participant fails to achieve a collaborative AFH goal when that program participant exerts good faith efforts to achieve collaborative AFH goals.

HUD Response: HUD recognizes the concerns of these commenters. HUD notes that the AFH is a planning tool. By providing data and information intended to inform local planning and decision making. The AFFH process is intended to assist program participants in meeting their legal obligation to affirmatively further fair housing, which continues beyond the submission of the AFH. Program Participants have an ongoing obligation to comply with the Fair Housing Act and other civil rights requirements.

Regarding the requirement that program participants, including PHAs, must identify significant fair housing issues and contributing factors that may be outside of their control to influence, HUD notes that doing so is still important for planning purposes. Even if they may not have the direct ability to impact or exert control over contributing factors, identifying these factors can, for example, provide context for the barriers facing the eligible populations that the PHA serves. HUD acknowledges that program participants may identify contributing factors that

are outside of their control or the boundaries of their service areas. The AFH is a planning document, and a basic tenet of planning and performance management is recognition of “external factors” and other barriers to achieving goals, which sometimes are beyond an organization’s control (See, e.g., the Federal Government Performance and Results Act). The final AFFH rule requires grantees to identify such barriers. Included in such considerations is the identification of resources such as staffing and funding. HUD notes that addressing these types of contributing factors may require a collaborative approach that includes action by local, State, and private sector entities. Identifying contributing factors outside the control of a program participant may also be useful for considering interagency or public-private collaborative efforts. Program participants are expected to identify contributing factors regardless of their ability to exert control over a contributing factor or their proximity to the contributing factor identified if that factor significantly creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. However, if the program participant has met its planning requirements by identifying such factors, but addressing those factors is outside that program participant’s control, the program participants are expected to undertake good faith collaborative and outreach efforts with local government, private sector, and other applicable governmental entities to address the identified fair housing issue. When these type of substantive collaborative actions are undertaken to address contributing factors outside of their direct sphere of influence or the service area of PHAs, HUD monitoring and oversight actions will take into consideration that there may be extenuating circumstances when there is a lack of collaboration by partnering program participants or private sector entities. Therefore, although collaborating program participants are responsible for any joint goals that are set, each collaborating program

participant is only accountable for meeting its own planning requirements in addressing the contributing factors and related fair housing issues.

HUD encourages program participants to set fair housing goals that are within their sphere of influence that can be reasonably expected to be achieved. Goals and priorities in the AFH should be meaningful, realistic, and focus on changes that are achievable. HUD understands that achievement of certain goals may depend on what resources are available or will become available within the timeframe set for achievement. Program participants have latitude in setting goals to account for available resources and to prioritize strategies and actions that are more likely to be successful and to achieve the greatest impact. A program participant need not, and indeed should not, set a goal over which it maintains no control. There may be instances where a program participant's efforts to address contributing factors it has control over will assist another program participant with a goal it has set.

HUD recognizes public commenters' concerns regarding their ability to control contributing factors and their proximity to these contributing factors. HUD recommends program participants distinguish between significant contributing factors they control, and those they do not, as well as how they might respond to contributing factors they do not control, but can address in the context of their own operations. PHAs, in particular, are advised to consider these issues as they prioritize contributing factors and establish meaningful goals to overcome the effects of the fair housing issues they can control.

HUD has included instructions in the Assessment Tools, and has issued additional guidance to clarify how program participants, including PHAs, may set collaborative goals to address contributing factors and fair housing issues that are beyond their direct purview, control, or expertise. HUD anticipates including further guidance, including in an updated version of the

AFFH Rule Guidebook, on identifying contributing factors, prioritizing them, and setting appropriate goals.

HUD Provided Data

Several commenters provided feedback on HUD-provided data that is to be used to complete the AFH. A number of commenters noted that the data currently provided by HUD is not sufficient to assist them in deciding whether to collaborate. Another commenter noted that some of the PHA's units were not included in HUD-provided data. Another commenter was concerned that the data is not user-friendly enough, and may be outside the skillset of PHA staff. A commenter stated that the disparities in access to opportunity section should include Table 12, which HUD has made optional.

Other commenters requested that HUD provide more data, or different data. A commenter requested that HUD provide data at a more granular level. The commenter noted that in order to advance fair housing, public policies must be adopted at the municipal level, but HUD does not provide relevant block-group level data by municipality. The commenter noted that Census tract-based data obscure concentrations of poverty and other characteristics within small cities where census tracts cross municipal boundaries. The commenter requested that HUD provide census data for the portion of the Census Tract within each municipality, or if it not reliable at the block group level within a portion of the Census Tract, HUD should provide data from multiple block groups of adjoining census tracts within the same municipality. Commenters requested that HUD provide additional data about individuals with disabilities, including Medicaid home and community-based waiver programs, Money Follows the Person program, disability, and individuals in nursing homes, and suggested that HUD should instruct program participants to seek supplemental information from Aging and Disability Resource Centers

(ADRCs) and Centers for Independent Living (CILs). Commenters requested that HUD provide more information and demographic data on LIHTC properties, as HUD already collects data pursuant to the 2008 Recovery Act, and if HUD is unable to provide data, it should instruct PHAs to use their own demographic data for any LIHTC-assisted PHA properties. Some commenters suggested that until HUD provides data on disabilities and LIHTC, it should not ask about these subjects.

A commenter appreciated that HUD provides data in its raw format because PHAs otherwise cannot collect this raw data.

HUD Response: HUD appreciates the commenters' suggestions. HUD is continuing to work to increase the ease of electronic availability of the Assessment Tool, maps, and tables. The agency will continue to improve upon the HUD-provided data and maps to strive to make them easily accessible and easily readable to its program participants. HUD will continue to explore options for making improvements to the User Interface, to data provided and the functionality of the data tool, and for providing additional guidance on using the HUD-provided data in the instructions to the Assessment Tool, as well as through other guidance materials. As HUD assesses longer-term improvements to the Assessment Tool data, HUD will continue to consider the comments received that recommended significant changes.

As to the comments about LIHTC data, HUD continues to administer and improve the LIHTC data on projects placed-in-service and LIHTC tenant demographic data. HUD will work to provide data for AFFH-T at an appropriate level of geography (e.g., State, County, City, development and in rural areas outside of CBSA regions, etc.) as the data becomes available and verified for consistency and reliability. These data may be available in a variety of formats external to the AFFH-T Data and Mapping Tool. It is not expected that development level tenant

data will be available in the near term due to current data quality issues. Additionally, compliance with federal privacy requirements will limit certain development-level data that will be available in the future. For background on data that are currently available, please see HUD's report, "Data on Tenants in LIHTC Units as of December 31, 2013" which is available at <https://www.huduser.gov/portal/publications/data-tenants-LIHTC.html>. HUD will also continue to pursue additional guidance on potential sources of readily and easily accessible information that may be useful as supplementary local data.

Reducing Burden Through Technical Assistance and Funding

One commenter noted that HUD has stated that Technical Assistance will be provided to PHAs, but the commenter urges that HUD make this a priority. Commenters also encouraged HUD offices throughout the country to be knowledgeable about AFFH.

Other commenters expressed concern about funding and hiring consultants. Some commenters urged HUD to request additional funding from Congress for PHAs to complete their AFHs.

HUD Response: HUD thanks commenters for their responses. HUD is committed to providing program participants with the resources they need to complete their AFHs, and encourages program participants to review existing HUD guidance, notices, and responses. HUD will continue to explore opportunities for providing greater guidance, training and technical assistance to program participants.

Community Participation

Some commenters stated that HUD should encourage more robust community participation. A commentator stated that program participants should be asked if they consulted

stakeholders working in areas of public health, education, workforce development, environmental planning, or transportation so that program participants take an expansive view of their community members. Another commenter stated that HUD should inquire about the extent to which program participants effectively engaged in communications with persons with disabilities. A commenter noted that HUD's outreach to the RAB and other residents are positive improvements, and HUD should include additional language to reach residents of public housing, Section 8 HCV households, and persons eligible to be served by the PHA, including those currently on a PHA-administered waitlist. HUD should also require descriptions of how documents were provided to the community and require PHAs to include solicitation of feedback on preservation of properties, and resident relocation and mobility from R/ECAPs. The commenter agreed that PHAs should be given guidance that they can solicit feedback through surveys, but as a supplement, not a substitute, to that which community participation requires. Another commenter stated that HUD should remind program participants that collaboration does not relieve individual PHAs of the duty to engage in the community participation process.

A commenter requested that "HUD should note that HUD will not apply a rigorous statistical validity test for all local data when discussing 'subject to statistical validity.' This is important so important local data and local knowledge is not dismissed by the PHA during community participation."

Other commenters urged HUD to lessen the requirements of the community participation process. One commenter suggested that HUD should tell program participants that they do not need to "expend excessive or unreasonable staff time and cost to review data received during the community participation process beyond what is necessary to adequately consider the data in accordance with the AFFH rule." Other commenters stated that community participation should

be limited to RABs and applicable community partners, and another stated that program participants should not be required to consult with other government agencies.

HUD Response: The final rule strengthened the community participation requirements by directing each program participant to employ communications methods that are designed to reach the broadest audience. As HUD stated in the 30 Day PRA notice for the PHA Assessment Tool, “HUD also notes that the community participation process that is part of conducting an AFH may yield important information from members of the community about [fair housing] issues for the PHA to consider as it conducts its AFH.” 81 FR 64475, at p. 64481 (Sept. 20, 2016). HUD encourages program participants to consult stakeholders including fair housing groups, civil rights groups, disability rights groups, and other organizations in order to collect robust information through the community participation process that will provide valuable assistance to program participants in identifying contributing factors, prioritizing these factors, and setting meaningful goals that are designed to overcome fair housing issues. In the broader context, HUD notes that the area of encouraging and incorporating public involvement in planning activities is a growing field of interest and that there are likely to be technological ideas and solutions that may be worthy of additional interest and inquiry over time.

With respect to the commenter who requested that HUD note that it will not apply a statistical validity test for all local data, as HUD noted in the preamble to the final AFFH rule, “The phrase ‘subject to a determination of statistical validity by HUD’ is included to clarify that HUD may decline to accept local data that HUD has determined is not valid but not that HUD will apply a rigorous statistical validity test for all local data.” 80 FR 42272, at p. 42306 (July 16, 2015). HUD has revised the instructions to the Assessment Tool in the definition of “local data and local knowledge” to reiterate this.

Specific Suggestions for the Assessment Tool

A commenter noted that HUD should clarify timelines for collaborations.

Another commenter suggested that HUD reduce the segregation section to not require a segregation/integration analysis since PHAs are not experts. The commenter also suggested that HUD combine demographic analysis with the Publicly Supported Housing section and remove transportation, education, and employment from the disparities section. The commenter also stated that the instructions should be shortened.

A commenter stated that the question that asks, “Describe the waitlist(s) policy of the PHA to include preferences, placement determination (e.g., first-come, first-served vs. lottery), program selection (e.g., agency-wide waitlist or by development), application method, length of time application window is open, and average wait time list” in the “Disability and Access Analysis” section should also be included in the Segregation and R/ECAPs sections because these practices also affect access for other protected groups. Another commenter objected to the question because HUD already requires waitlist policies and practices in five-year and Annual Plans. Another commenter was opposed to this question because of the number of individuals on the waitlist in some PHAs. Commenter suggested that instead, HUD should include one or more questions focused on a PHA’s waiting list policies and administration from a fair housing perspective, including any PHA proposals to improve its processes to further fair housing goals.

A commenter noted that the Housing Enforcement section should ask about pending fair housing or other civil rights complaints, which may be helpful in noticing emerging fair housing issues. Another commenter found this section to be vague.

A commenter stated that the Assessment Tool should incorporate comprehensive consideration of sex, gender, and fair housing challenges experienced by women in the analysis, as well as address the fair housing barriers experienced by survivors of domestic violence and sexual assault. The commenter also suggested that the Tool ask for an analysis of barriers to fair housing choice by local nuisance laws.

A commenter noted that HUD should eliminate reviews of Analyses of Impediments (AIs) in the Assessment Tool, and HUD should revert back to the AI process.

A commenter suggested that HUD should modify the threshold for QPHAs.

A commenter noted that limitations on use of local data and local knowledge should be included in notes to the public about use of local data and local knowledge.

A commenter noted that asking PHAs to analyze trends that may influence segregation in the future is speculative, and the Assessment Tool should not ask this. The commenter also noted that the Tool should not require inventories of local laws, policies, and practices. The commenter suggested that the additional information questions be eliminated because they are redundant, and PHAs should not be required to conduct regional analysis of admissions and occupancy policies and procedures including preferences in publicly supported housing or to analyze regional analysis of nuisance laws, land use and zoning laws, a complete inventory of all assisted housing, policies related to rents and FMRs, and source of income discrimination. The commenter stated that it believed the occupancy codes and restrictions questions should not be included because it conflicts with HUD policies and practices. The commenter also objected to questions that asked for an analysis of R/ECAPs and noted that a regional analysis of R/ECAPs is not useful to PHAs.

A commenter suggested removing the Disproportionate Housing Needs analysis because it is duplicative and is covered in other analysis.

A commenter stated that instructions for the assessment of Past Goals, Actions, and Strategies should explain that “other relevant planning documents” include ACOPs, Administrative Plans, past PHA Plans (including Five Year and Annual Plans), and Language Assistance Plans to the extent the PHA has adopted policies, practices, or procedures that implicate fair housing choice.

A commenter noted that HUD should change “transforming R/ECAPs” to “expanding opportunity into R/ECAPs.”

A commenter stated that the Assessment Tool should acknowledge the Equal Access Rule and should explore the denial of housing choice due to sexual orientation, gender identity, or marital status, and steps that PHAs and other HUD funded entities have taken to implement the Equal Access Rule.

A commenter suggested that each section of the Assessment Tool should require PHAs to ask questions about disparities in access to services and infrastructure for members of protected classes who are (1) farmworkers, (2) mobile home residents, and (3) living in disadvantaged rural areas in the PHA’s service area or region, using local data and local knowledge.

HUD Response: HUD thanks commenters for their specific suggestions to improve the Assessment Tool.

As to the first comment, HUD encourages program participants to consult § 5.156 of the final rule for the rule’s requirements for Joint and Regional AFHs.

As to commenters who suggested eliminating sections or questions of the Assessment Tool and noted that the Tool requires an inventory, HUD reiterates that the Tool does not require an inventory of laws, policies, and practices, and the Tool is a planning tool designed to create solutions and goals that respond to the fair housing and disparities in access issues identified. HUD thanks commenters for their suggestions, and remains committed to providing Program Participants with a Tool that will allow them to conduct an analysis of fair housing issues facing their services areas, jurisdictions, and regions that will inform meaningful goal setting and priorities.

HUD also thanks commenters who suggested additional questions or areas to ask about in the Tool. HUD agrees that the Tool should ask about mobile home residents, and this is included in the final version of the Tool along with manufactured housing in the definition of the contributing factor, Land Use and Zoning Laws. HUD has also noted in the instructions to the Fair Housing and Enforcement section that program participants may discuss other protected classes covered by state and local fair housing and civil rights ordinances. While the final version of the Tool does not include Nuisance Laws as its own Contributing Factor, it adds the new factor, “Displacement of and/or lack of housing support for victims of domestic violence, dating violence, sexual assault, and stalking.” HUD has revised the Assessment Tool to better capture the nuances of nuisance laws by incorporating this into both the new abovementioned factor, and in the “Land Use and Zoning Laws” contributing factor. HUD also revised the Assessment Tool to ask about the PHA’s policies and practices, including those in the Admission and Continued Occupancy Policy (ACOP) and Administrative Plan, relating to fair housing.

As to the commenter who believed HUD should revert back to the AI process, HUD notes that since the AI process was not as effective as envisioned, the new AFFH process is

intended to provide a more robust fair housing analysis and to help program participants to select meaningful goals and priorities to meet their statutory obligation to Affirmatively Further Fair Housing.

As to the comment seeking clarification about local data and local knowledge, HUD has clarified in the instructions that there may be limited nationally-uniform data available for the regional analysis for PHAs in rural areas, and such data limitations may be present in the AFFH Data and Mapping Tool. In cases where data is unavailable, HUD expects that PHAs in rural areas will consult local data and local knowledge, including information obtained through the community participation process, to complete this analysis.

HUD has adopted the suggested change to modify the threshold of those PHAs that may use the insert, and has modified the threshold from QPHAs (550 units) to PHAs with 1,250 units or fewer. HUD will also continue to consider efforts to reduce administrative burden on all program participants, including PHAs.

Miscellaneous

A commenter asked whether the Tool raises the level of scrutiny for housing above Lindsey v. Normet's minimum level of scrutiny. The commenter stated that Lindsey v. Normet, held: (1) there is no fairness component of housing because there is no fairness component of property, and (2) there is homelessness. The commenter stated that in the Tool and the policies underlying it, the Government finds that fairness is a component of property and housing; further, dignity is the essence of the Tool and a component of housing. The commenter noted that in the Government's statement of interest in the Boise homelessness case, the government found that homelessness does not exist as homeless people are housed people whose housing is

assaulted. The government's policies show that housing has a higher level of scrutiny than minimum scrutiny, and the Supreme Court in the same-sex marriage case found that dignity is an individually enforceable right with a higher level of scrutiny than minimum scrutiny. The commenter asked: Does housing enjoy a level of scrutiny higher than minimum scrutiny? According to West Virginia v. Barnette, a fact is an individually enforceable right in court, and the level of scrutiny is raised, if, inter alia, the fact is "unaffected by assaults upon it." Does the government deny that this is the test? Has the government found that housing passed this test? Who has the power to enforce the Rule in court and pursuant to what right? What parts of these policies are individually enforceable?

A commenter noted that it felt its area did not lend itself to completing the Assessment Tool because the area is 99% white, with a 1% Native American population, and there is no segregation and schools are as integrated as they can be. The commenter noted that the government should stop trying to track differences.

A commenter stated that using race to lead decision making has serious constitutional questions, and cited to Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc., 135 S. Ct. 2507 (2015).

A commenter suggested that HUD create a working group to test the PHA Tool before implementation. HUD should require PHAs to conduct assessments as part of a demonstrations program before pursuing implementation.

A commenter noted that HUD's new HUD Environmental Review Online System (HERO) requires a partial AFFH analysis of environmental factors, and this is duplicative and

uncoordinated with the AFFH Tool submission. The commenter recommended relying on the AFH process, not HERO for this analysis.

HUD Response: HUD has carefully reviewed the commenters' suggestions. As to the first commenter, HUD reviewed the case law cited by the commenter and has concluded that the cases are not applicable to the obligation to affirmatively further fair housing under the Fair Housing Act and under the AFFH rule. HUD continues to assert that the AFFH rule and the Assessment Tool implementing the requirements contained in the regulation will better facilitate compliance with the AFFH mandate under the Fair Housing Act.

HUD notes that in the Assessment Tool, in the instructions, that in identifying areas of segregation and integration program participants should not only focus on areas of minority concentration in their jurisdictions and regions, but also areas of majority concentration. HUD notes that segregation and integration are defined in the AFFH regulation at 24 CFR 5.152 and apply to minority concentration and majority concentration, no matter the protected class. HUD has also included instructions related to analyzing segregation in majority-minority communities and where there are concentrations of particular national origin, ethnic, or religious groups.

HUD thanks commenters for their suggestions regarding testing the PHA Tool. HUD submits that it has given commenters sufficient time to comment on the Assessment Tool through the PRA process, with both the 60-day and 30-day notices.

Program Participants are reminded that they must apply with all applicable laws, including Fair Housing Laws and the Privacy Act.

As to the last commenter, HUD notes that the AFFH rule requires fair housing planning and describes the required elements of the fair housing planning process. The first step in the

planning process is completing the fair housing analysis required in the AFH. The rule establishes specific requirements program participants will follow for developing and submitting an AFH and for incorporating and implementing that AFH into subsequent Consolidated Plans and Public Housing Agency (PHA) Plans in the form of strategies and actions. This process will help to connect housing and community development policy and investment planning with meaningful actions that affirmatively further fair housing. The new approach put in place by this rule is designed to improve program participants' fair housing planning processes by providing data and greater clarity to the steps that program participants must take to assess fair housing issues and contributing factors, set fair housing priorities and goals to overcome them, and, ultimately, take meaningful actions to affirmatively further fair housing. A goal of the AFFH rule is to make sure states and insular areas, local communities, and PHAs understand their responsibilities in the area of fair housing planning. As the Department works to foster effective fair housing planning, goal setting, strategies, and actions, it recognizes that the people who are most familiar with fair housing issues in cities, counties, and states are the people who live there and deal with these issues on a daily basis.

D. Summary

In issuing this Public Housing Agency Assessment Tool, approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, HUD has strived to reach the appropriate balance in having program participants produce a meaningful assessment of fair housing that carefully considers barriers to fair housing choice and accessing opportunity and how such barriers can be overcome in respective service areas and regions without being unduly burdensome. HUD has further committed to addressing program participant burden by providing data, guidance, and technical assistance, and such assistance will occur throughout the AFH

process. While HUD is not specifically soliciting comment for another prescribed period, HUD welcomes feedback from HUD grantees that use this Tool on their experience with this Tool.

Dated: January 9, 2017

Gustavo Velasquez, Assistant Secretary
for Fair Housing and Equal Opportunity

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